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FILED WITH THE BOARD OF  
RESPIRATORY CARE

ON

June 2, 2004

*Dorcas K. O'Neal*

STATE OF NEW JERSEY  
DEPARTMENT OF LAW AND PUBLIC SAFETY  
DIVISION OF CONSUMER AFFAIRS  
STATE BOARD OF RESPIRATORY CARE

IN THE MATTER OF :

DONNA PENDER-KIMBROUGH :  
License No. ZA003116 :

Administrative Action

LICENSED TO PRACTICE :  
RESPIRATORY CARE IN :  
THE STATE OF NEW JERSEY :

ORDER OF SUMMARY SUSPENSION

This matter was opened to the New Jersey State Board of Respiratory Care upon discovery of the following information:

1. Respondent, Donna Pender-Kimbrough, License No. ZA003116, was licensed to practice respiratory care in the State of New Jersey from May 19, 1995 until April 24, 2001, and from April 1, 2002 to March 31, 2004, after which time respondent permitted her license to lapse. (See Certification of Dorcas K. O'Neal, dated May 25, 2004, a copy of which is attached hereto as Exhibit A, ¶ 3.)

2. Pursuant to N.J.A.C. 13:44F-8.5, respondent notified the Board of her change of address by forwarding a copy of her address

of record to the Board, which was filed on or about August 5, 1999. A copy of the notification is attached hereto as Exhibit B.

2. By letter of October 24, 2000 (sent by certified and first class mail to respondent's address on file with the Board), the Board directed respondent to appear at an investigative inquiry on November 14, 2000 to discuss with the Board her drug specimen, which was reported as positive for cocaine metabolites. (See Certification of Ms. O'Neal, Executive Director of the Board, dated January 8, 2001, a copy of which is attached hereto as Exhibit C, and correspondence from Ms. O'Neal to respondent dated October 24, 2000, a copy of which is attached hereto as Exhibit D.)

3. The certified mail receipt was signed by John Pender on December 31, 2000 at respondent's address, and the envelope sent by first class mail was not returned. Respondent failed to appear for investigative inquiry on November 14, 2000. (See Ex. C and the Certified Mail receipt dated December 31, 2000, a copy of which is attached hereto as Exhibit E.)

4. By letter of December 11, 2000 (sent by certified and first class mail to respondent's address on file with the Board), the Board directed respondent to appear at an investigative inquiry on January 2, 2001 to discuss the alleged positive drug specimen. (See Ex. C and letter from Ms. O'Neal to respondent dated December 11, 2000, a copy of which is attached hereto as Exhibit F.)

5. The certified mail receipt was not received, and the first class mailing was not returned. (See Ex. C.) Respondent failed to appear for an investigative inquiry on January 2, 2001. (See Provisional Order of Discipline, dated January 8, 2001 ("Provisional Order"), a copy of which is attached hereto as Exhibit G, ¶ 5.)

6. Accordingly, the Provisional Order was mailed to respondent's address on file with the Board by certified mail and first class mail on January 8, 2001. It notified respondent that her actions constituted a failure of the duty to cooperate in an investigation of the Respiratory Care Board which further constituted professional misconduct. The Provisional Order allowed respondent thirty business days in which to submit a written request for modification or dismissal of the Findings of Fact contained in the Provisional Order. (See Ex. G and the Declaration of Paula J. Benson, dated March 1, 2001, a copy of which is attached hereto as Exhibit H, ¶ 2.)

7. The envelope mailed by regular mail was not returned, and the envelope mailed by certified mail was returned marked "unclaimed." No response was received to the Provisional Order. (See Ex. H, ¶¶ 3, 4, 5 and Certification of Ms. O'Neal, a copy of which is attached hereto as Exhibit I, ¶ 3.)

8. Accordingly, a Final Order of Discipline, dated April 13, 2001 ("Final Order"), was mailed to respondent's address on file by

certified and first class mail on or about April 24, 2001. (See letter from Ms. O'Neal, with attached Final Order, dated April 24, 2001, a copy of which is attached hereto as Exhibit J. See also Ex. A, ¶ 4.) Under the Final Order, respondent's license was suspended due to her failure to fulfill the duty to cooperate in an investigation of the Respiratory Care Board, until such time as she appeared for an investigative inquiry before the Board. (See Ex. J, ¶ 4.) No response was received at any time following issuance of the Final Order. (See Ex. A, ¶ 5.)

9. Due to an administrative error, respondent was issued a biennial renewal application and renewed her license for the period of April 1, 2002 to March 31, 2004 on or about April 10, 2002. (See Ex. A, ¶ 6.)

10. As the issuance of the license was in error, the Board directed respondent to appear for further inquiry on January 13, 2003 by letter dated December 8, 2003, sent by certified and first class mail to respondent's address on file with the Board. By letter dated December 12, 2003, sent by certified and first class mail to respondent's address on file with the Board, the Board revised the date and time of the scheduled appearance and directed respondent to appear before the Board on January 6, 2004. (See letters from Ms. O'Neal to respondent, dated December 8, 2003 and December 12, 2003, attached hereto as Exhibits K and L respectively.)

11. In addition, a subpoena was issued directing respondent to appear to testify before the Board about any and all rehabilitative efforts she has made since October 12, 2000, the circumstances underlying her failure to respond to the Board's requests for appearance and orders in 2000 and 2001, and the circumstances regarding her receipt of the biennial renewal application and renewed license for the period April 1, 2002 to March 31, 2004. (A copy of the Administrative Action Subpoena ad Testificandum, dated December 11, 2003 ("the Subpoena"), is attached hereto as Exhibit M.)

12. On December 19, 2003, investigator John Czuba of the Consumer Affairs Enforcement Bureau attempted to serve the Subpoena at the address on file with the Board, but respondent's father refused to accept service on her behalf. (A copy of the Certification of Due Diligence of John Czuba, dated December 30, 2003, is attached hereto as Exhibit N.)

13. No response to the letters or subpoena was received. Finally, respondent failed to appear at the investigative inquiry on January 6, 2004. (See Ex. A, ¶¶ 7, 8, 9.)

14. Respondent failed to submit a license renewal application and fee prior to March 31, 2004, the expiration date of her license, pursuant to N.J.A.C. 13:44F-7.1(a). Nor did she renew the license within 30 days of its expiration, pursuant to N.J.A.C.

13:44F-7.1(c). (See Ex. A, ¶ 10.) Therefore, respondent is in lapsed license status.

15. Respondent's actions, as set forth herein, constitute a failure of the duty to cooperate in an investigation of the Respiratory Care Board in violation of N.J.A.C. 13:45C-1.2 and 1.3, which constitutes professional misconduct in violation of N.J.S.A. 45:1-21(e).

16. Respondent's further failure to submit her biennial renewal resulted in a lapsed license status and therefore provides grounds to automatically suspend respondent's license to practice respiratory care in the State of New Jersey pursuant to N.J.S.A. 45:1-7.1(b).

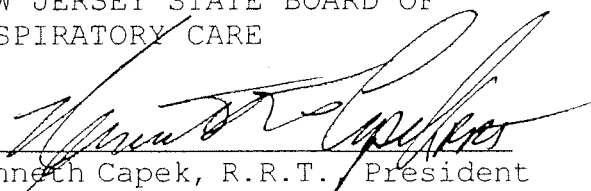
ACCORDINGLY, IT IS on this 1 day of June, 2004,  
ORDERED AND AGREED THAT:

1. Respondent's license to practice respiratory care in the State of New Jersey shall be and hereby is suspended by operation of N.J.S.A. 45:1-7.1, without hearing.

2. In the event that respondent seeks reinstatement of a New Jersey license at any time in the future, this order shall require

respondent to show cause why the application for reinstatement should not be refused or issued subject to such restraints as the Board may deem appropriate.

NEW JERSEY STATE BOARD OF  
RESPIRATORY CARE

  
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Kenneth Capek, R.R.T. President